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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

May 25, 2000

AO-00-08

Darlene Perry, Treasurer
Natick Champions for Education
3 Rathburn Road
Natick, MA 01760

Re: Refund of Contributions

Dear Ms. Perry:

This letter is in response to your May 4, 2000 request for an advisory opinion regarding the refund of contributions received by a ballot question committee.

You have stated that Natick Champions for Education (the “Committee”) is a ballot question committee organized to support the passage of a debt exclusion override to construct, furnish, and equip a new middle school and to provide educational upgrades to another school. The Committee was organized on March 28, 2000 and began raising funds for its campaign. Although the Natick Town Meeting passed the warrant article appropriating funds for the Project, the selectman did not place the override on the ballot. Instead, as a compromise, the selectmen created a committee to identify and attempt to sell surplus municipal property, the proceeds from which will reduce the amount required for the override. The selectmen plan to revisit the question of how much would be needed for the override for the school projects this fall.¹

As the Committee’s treasurer, you are holding approximately 50 uncashed checks from contributors that you have not deposited. The checks were sent in response to the Committee’s recent fund raising appeal. You believe that there is a reasonable likelihood of an override question being placed on the ballot this fall. If such a question were not placed on the ballot, however, you would like to return the contributions to the contributors.

¹ A ballot question committee may only support or oppose identical or substantially identical questions. See AO-98-08. If the nature and scope of the fall override, if any, were significantly different from the override that was anticipated for this spring, it would be inappropriate to expend funds to support the fall override. Instead, the contributions would have to be refunded. See 970 CMR 1.04(9) discussed herein. For purposes of this opinion, I assume that the fall override meets the “substantially identical” test.

You ask generally whether you can take some action that would make it possible to return the funds if no election is held. By way of example you ask if you can hold the uncashed checks “in escrow” until the selectmen make a decision or treat the contributions as loans.

Question: May the Committee deposit the contributions now, or take any of the other actions that you suggest, in anticipation of the selectmen placing a substantially identical question on the ballot this fall and return those contributions if the selectmen do not take such action?

Answer: Yes.

Discussion

The campaign finance law is a comprehensive law that governs all aspects of “the collection and expenditure of funds for election purposes.” Anderson v. City of Boston, 376 Mass. 178, 183 (1978) appeal dismissed 439 U.S. 1069 (1979). Political committees, including ballot question committees, may receive contributions only “as authorized by [chapter 55].” M.G.L. c. 55, s. 7. The campaign finance law, however, authorizes the office to issue rules and regulations to carry out the law’s purposes. See M.G.L. c. 55, ss. 3 and 6. Neither the law nor the office’s regulations, however, specifically provide for the holding of uncashed contribution checks “in escrow.”² In addition, although the law provides that contributions may be made in the form of a loan, neither the law nor the office’s regulations provide that a treasurer may unilaterally treat a contribution as a loan. The nature of a contribution is determined by the contributor not the committee at the time a contribution is made.

The office has, however, issued regulations that authorize a political committee to refund a contribution subsequent to its deposit for various reasons. See 970 CMR 1.04(9). Although the regulations do not specifically address the facts of this case, they do provide generally that a political committee may refund a contribution if “(a) [t]he political committee . . . determines that the receipt of the particular contribution creates an appearance of a conflict of interest or *other possible impropriety*.” (Italics added.)

Contributors give to a municipal ballot question committee with the implicit, if not explicit, understanding that the committee will use these funds to promote a specific ballot question. If the question is not placed on the ballot due to circumstances beyond a committee’s control, the committee could reasonably conclude that failure to refund the contributions would be improper. A municipal ballot question committee that has been organized to promote a specific debt exclusion override at a town election may, therefore, elect to refund such contributions to its contributors if that election does not take place. Under these circumstances, such a committee would not be limited to refunding contributions within 90 days of receipt. See 970 CMR 1.04(9)(c), which permits refunds of contributions for any reason within 90 days of receipt. If refunds are made under these circumstances, they should be made either on a pro-rata basis or on a “last in, first out” basis.

² The regulations provide that a contribution that is returned “in its original form” is deemed not to have been accepted. 970 CMR 1.04(7). You could therefore return the checks now and solicit contributions later although I recognize that you wish to avoid this additional fund raising effort. The purpose of 970 CMR 1.04(7) – (9), however, is to provide treasurers with a reasonable opportunity to determine whether a contribution is legal, improper or inconsistent with committee policy and, if not, to return or refund the contribution. The regulations are not designed to permit treasurers to keep uncashed checks “in escrow” for unlimited periods of time.

Darlene Perry
May 25, 2000
Page 3

If the debt exclusion override does appear on the ballot and there are funds remaining in the Committee's treasury after the vote, such funds must be donated in accordance with the campaign finance law's residual funds clause. See M.G.L. c. 55, s. 18.

For the above reasons, it is my opinion that you may, as treasurer, deposit the contributions received and, if the override does not appear on the ballot this fall, refund any such contributions consistent with 970 CMR 1.04(9)(b) and this opinion.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director